

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	CR. NO.: 3:14-cr-00015-WKW
)	
TRACY MITCHELL)	

PLEA AGREEMENT

DEFENSE COUNSEL:	DWAYNE BROWN
TRIAL ATTORNEYS:	MICHAEL C. BOTELER GREGORY BAILEY TODD A. BROWN

COUNTS AND STATUTES CHARGED:

Count 1	<u>18 U.S.C. § 286</u> Conspiracy to Defraud the Government with Respect to Claims
Counts 2 – 14, 21, 22, 30-33	<u>18 U.S.C. § 1343</u> Wire Fraud
Counts 37 – 53	<u>18 U.S.C. § 1343</u> Mail Fraud
Counts 58 – 70, 77, 78, 86-89 93 – 109	<u>18 U.S.C. § 1028A</u> Aggravated Identity Theft
Count 114	<u>18 U.S.C. § 1029(a)(3)</u> Possession of Unauthorized Access Devices

COUNTS PLEADING PURSUANT TO PLEA AGREEMENT:

Count 1	<u>18 U.S.C. § 286</u> Conspiracy to Defraud the Government with Respect to Claims
Count 2	<u>18 U.S.C. § 1343</u> Wire Fraud

Counts 58 18 U.S.C. § 1028A
Aggravated Identity Theft

PENALTIES BY COUNTS - MAXIMUM PENALTY:

Count 1 18 U.S.C. § 286
Conspiracy to Defraud the Government with Respect to
Claims

A term of imprisonment which may not be more than 10 years, a fine not to exceed either \$250,000, or twice the gross gain to the defendant or the gross loss to any person other than the defendant, or both a fine and imprisonment; a term of supervised release of no more than 3 years; restitution; and an assessment fee of \$100.00.

Count 2 18 U.S.C. § 1343
Wire Fraud

A term of imprisonment which may not be more than 20 years, a fine not to exceed either \$250,000, or twice the gross gain to the defendant or the gross loss to any person other than the defendant, or both a fine and imprisonment; a term of supervised release of no more than 3 years; restitution; and an assessment fee of \$100.00.

Count 58 18 U.S.C. § 1028A
Aggravated Identity Theft

A mandatory term of imprisonment of two years to run consecutive to any other term of imprisonment, a fine not to exceed either \$250,000, or twice the gross gain to the defendant or the gross loss to any person other than the defendant, or both a fine and imprisonment; a term of supervised release of no more than 1 year; restitution; and an assessment fee of \$100.00.

ELEMENTS OF THE OFFENSES:

Count 1 18 U.S.C. § 286
Conspiracy to Defraud the Government with Respect to
Claims

1. Two or more people in some way agreed to try to accomplish a shared and unlawful plan;
2. The Defendant knew the unlawful purpose of the plan and willfully joined in it; and

3. The plan was to defraud the Government by obtaining the payment or allowance of a claim based on a false or fraudulent material fact.

Count 2 18 U.S.C. § 1343
Wire Fraud

1. The Defendant knowingly devised or participated in a scheme to defraud, or to obtain money or property by using false pretenses, representations, or promises;
2. The false pretenses, representations, or promises were about a material fact;
3. The Defendant acted with the intent to defraud; and
4. The Defendant transmitted or caused to be transmitted by wire some communication in interstate commerce to help carry out the scheme to defraud.

Count 58 18 U.S.C. § 1028A
Aggravated Identity Theft

1. The Defendant knowingly transferred, possessed, or used another person's means of identification;
2. Without lawful authority; and
3. During and in relation to an eligible felony.

Michael C. Boteler and Gregory Bailey, Trial Attorneys of the U.S. Department of Justice, Todd A. Brown, Assistant United States Attorney, and Dwayne Brown, attorney for the Defendant, pursuant to Federal Rules of Criminal Procedure 11(c)(1)(A) and (c)(1)(B), as amended, have, with the authorization of the undersigned Defendant, heretofore entered into discussions with a view towards reaching a pretrial conclusion of the charges pending in the Superseding Indictment and a Plea Agreement has been reached by said parties.

GOVERNMENT'S PROVISIONS

1. For the purpose of calculating the Defendant's sentence under the United

States Sentencing Guidelines, pursuant to Federal Rule of Criminal Procedure

11(c)(1)(B), the Government and the Defendant agree that the following Guidelines calculations apply. The Government and the Defendant reserve the right to argue for or against the applicability of any other Guidelines calculations or provisions:

a. That on Counts 1 and 2, the applicable Guidelines section is U.S.S.G. § 2B1.1.

b. That the 2-level reduction in the applicable offense level pursuant to § 3E1.1(a) for the Defendant's acceptance of responsibility is appropriate, and if the Defendant's offense level is sixteen or more and should the Government find that the Defendant assisted authorities in the investigation or prosecution of her own misconduct by timely notifying authorities of her intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and this Court to allocate their resources efficiently, the Government agrees to move at sentencing for a further reduction of one level, pursuant to § 3E1.1(b). Determination of whether the defendant met her obligations to qualify for the reduction pursuant to § 3E1.1(b) is at the sole discretion of the United States. The Government's obligation under this subparagraph will become null and void if, between the date of this agreement and the date of sentencing, the Defendant obstructs justice, commits any new federal or state offenses, or otherwise fails to accept responsibility for the offense.

2. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the Government agrees to recommend a sentence at the bottom of the Guidelines Range.

3. The United States reserves the right to inform the Court and the Probation

Office of all facts pertinent to the sentencing process, including all relevant conduct concerning the charged offenses, as well as all other uncharged related criminal activity. The United States may include information concerning the background, character, and conduct of the Defendant, including the entirety of her criminal activities.

4. If the Defendant pleads guilty and is sentenced on Counts 1, 2, and 58, the Government will dismiss the remaining charges and not bring any other charges based on the factual basis.

DEFENDANT'S PROVISIONS

5. The Defendant agrees to plead guilty to Counts 1, 2, and 58 of the Superseding Indictment.

6. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the Defendant agrees that the Guidelines calculations set forth in Paragraph 1 are correct and apply. The Defendant reserves the right to argue for a downward departure or variance.

7. The Defendant agrees not to commit any other federal, state, or local offense while awaiting sentencing, whether that offense is charged or chargeable or not. Such criminal activity would include, but is not limited to, witness tampering or facilitation of any other criminal activity. The Defendant agrees to provide truthful information to the Probation Office and/or the Court. Determination of whether the Defendant's conduct is a violation of this provision is at the complete discretion of the Government.

8. The Defendant further agrees to forfeit to the United States voluntarily and immediately all of her right, title and interest to any and all assets, and/or their substitutes which are subject to forfeiture, pursuant to Title 18, United States Code, Section

981(a)(1)(C), as incorporated by Title 28, United States Code, Section 2461(c), and the procedures set forth at Title 21, United States Code, Section 853, including, but not limited to:

- A. the United States currency in the amount of \$329,242.00 seized at 106 Richburg Street, Phenix City, Alabama, on or about December 17, 2013.

9. The Defendant agrees to waive notification about any forfeiture proceedings, whether administrative or judicial and agrees to waive any statute of limitation considerations.

10. The Defendant further agrees to waive any constitutional challenges to the forfeiture, including any challenges under the Eighth Amendment to the United States Constitution.

11. Furthermore, the Defendant agrees to execute any other document necessary to transfer all rights, title, and interest in the above-described property.

12. The Defendant and by these presents does for her heirs, statutory survivors, executors, administrators, personal representatives, successors and assignees, hereby release and forever discharge the United States of America, it agencies, and their employees, agents or assigns from any claims arising from the forfeiture and disposition of the Defendant's property in connection with the events which form the basis of this case.

13. The Defendant also agrees to assist this Office in all proceedings, whether administrative or judicial, involving the forfeiture to the United States of all rights, title, and interest, regardless of their nature or form, in all assets, including real and personal

property, cash and other monetary instruments, wherever located, which the defendant or others to her knowledge have accumulated as a result of illegal activities. Such assistance will involve an agreement on defendant's part to the entry of an order enjoining the transfer or encumbrance of assets which may be identified as being subject to forfeiture, including but not limited to those specific real and personal properties set forth in the forfeiture counts of the Superseding Indictment. Additionally, defendant agrees to identify as being subject to forfeiture all such assets, and to assist in the transfer of such property to the United States by delivery to this Office upon this Office's request, all necessary and appropriate documentation with respect to said assets, including consents to forfeiture, quit claim deeds and any and all other documents necessary to deliver good and marketable title to said property.

14. The Defendant understands that, pursuant to 18 U.S.C. § 3663A(c)(1), restitution is mandatory for the offenses to which she is pleading guilty, with the amount of restitution to be determined by sentencing. The Government will not oppose the liability being joint and several with any others who may be found liable because of their involvement in the same conspiracy and related crimes described in the factual basis section of this agreement.

15. The Defendant agrees that this agreement or any judgment, order, release, or satisfaction issued in connection with this agreement, will not satisfy, settle, or compromise the defendant's obligation to pay the balance of any remaining civil liabilities, including tax, additional tax, additions to tax, interest, and penalties, owed to the IRS for the time period(s) covered by this agreement or any other time period.

16. The Defendant agrees that, unless the Director of the Administrative Office of the United States Courts directs her otherwise, all payments made pursuant to the Court's restitution order are to be sent only to the Clerk of the Court for the Middle District of Alabama. With each payment to the Clerk of the Court made pursuant to the Court's restitution order, the Defendant will provide the following information:

- a. The Defendant's name and Social Security number;
- b. The District Court docket number assigned to this case;
- c. Tax year(s) or period(s) for which restitution has been ordered; and
- d. A statement that the payment is being submitted pursuant to the District Court's restitution order.

17. The Defendant agrees to include a request that the Clerk of the Court send the information, along with the Defendant's payments, to the IRS at the following address:

IRS-RACS
Attention: Mail Stop 6261, Restitution
333 W. Pershing Avenue
Kansas City, MO 64108

The Defendant also agrees to send a notice of any payments made pursuant to this agreement, including the information listed in the previous paragraph, to the IRS at that address.

DEFENDANT'S WAIVER OF APPEAL AND COLLATERAL ATTACK

18. Understanding that 18 U.S.C. § 3742 provides for appeal by a defendant of the sentence under certain circumstances, the Defendant expressly waives any and all rights conferred by 18 U.S.C. § 3742 to appeal the sentence. The Defendant further expressly waives the right to appeal the conviction and sentence on any other ground and

waives the right to attack the conviction and sentence in any post-conviction proceeding. This waiver does not include the right to appeal on the ground of ineffective assistance of counsel or prosecutorial misconduct. In return for the above waiver by the Defendant, the Government does not waive its right to appeal the sentence imposed in the instant case. The Government does not waive its right to appeal any order dismissing the Information, vacating a sentence, or otherwise terminating the prosecution at any stage of the proceedings. Further, the parties agree that nothing in this agreement shall affect the Government's right and/or duty to appeal as set forth in 18 U.S.C. § 3742(b). However, if the United States appeals the Defendant's sentence pursuant to 18 U.S.C. § 3742(b), the Defendant is released from this waiver.

FACTUAL BASIS

19. The Defendant admits the allegations charged in Counts 1, 2, and 58 and understands that the nature of the charges to which the plea is offered involves proof as follows:

a. Beginning in or about December 2012 and continuing until at least in or about December 2013, within the Middle District of Alabama, the Defendant did willfully and knowingly conspire with Keisha Lanier and others to defraud the United States by obtaining or aiding to obtain the payment of false, fictitious, and fraudulent claims, in particular the filing of fraudulent federal tax returns using stolen identities.

b. Between 2011 and 2013, the Defendant was employed at a hospital on Fort Benning, a United States Army post located in Columbus, Georgia. In her employment, the Defendant had access to the means of identification of military personnel, including their names, social security numbers, addresses, and dates of birth.

c. On various dates in 2012 and 2013, the Defendant unlawfully obtained the means of identification of military personnel from her employment. The Defendant used those means of identification to file fraudulent federal tax returns from her home in Phenix City, Alabama.

d. On various dates in 2013, the Defendant unlawfully obtained from Keisha Lanier the means of identification of individuals. The lists came from an Alabama state database. Keisha Lanier also provided the Defendant Electronic Filing Identification Numbers (“EFINs”) in the names of several sham tax preparation businesses for the purpose of filing fraudulent tax returns.

e. On various dates in 2013, the Defendant unlawfully obtained from another the means of identification of individuals that came from the employee files from a company located in Columbus, Georgia.

f. In 2013, the Defendant and her co-conspirators used those means of identification to electronically file false tax returns from her home in Phenix City, Alabama. The Defendant maintained the means of identification at her home.

g. A portion of the \$329,242.00 seized from the Defendant’s home belonged to her and the remainder belonged to another.

h. On or about February 23, 2013, the Defendant for the purpose of executing the scheme and artifice to defraud, and to aid and abet the same, transmitted or caused to be transmitted by means of wire communication in interstate commerce, an electronic federal tax return in the name of “E.To.” that requested a tax refund in the amount of \$2,652.

i. On or about February 23, 2013, the Defendant did knowingly use a

means of identification of an actual person, “E.To.”, without lawful authority during and relation to the offense listed in Count 2. The Defendant caused a fraudulent tax return to be filed in the name of “E.To.” and that requested a refund in the amount of \$2,652. The Defendant caused a tax refund check issued in the name of “E.To.” to be cashed at a store in Georgia.

j. The Defendant, Keisha Lanier, and others caused fraudulent tax refund checks issued in the names of the stolen identities to be cashed at several companies in Alabama and Georgia.

k. The actions of the Defendant recounted above were in all respects voluntary, knowing, deliberate, and willful, and were not committed by mistake, accident or any other innocent reason.

DEFENDANT’S UNDERSTANDING AND ACKNOWLEDGMENT

20. The Defendant, before entering a plea of guilty to Counts 1, 2 and 58 as provided for herein by said Plea Agreement, advises the Court that:

a. The discussions between the attorneys for the government and the attorney for the Defendant towards reaching an agreed plea in this case have taken place with the Defendant’s authorization and consent.

b. The Defendant further understands that, pursuant to Title 18, United States Code, Section 3013, a \$300 assessment fee is to be paid by the Defendant on the date of sentencing. The Defendant will make an honest, good faith effort to pay said fine as directed by the Financial Litigation Section of the United States Attorney’s Office. The Defendant further understands that by completing and submitting to the court or the government any financial statements, the Defendant is representing that the

statement is true and accurate to the best of her information, knowledge, and belief.

c. The Defendant understands that the Defendant has a right to be represented by an attorney at every stage of the proceedings against the Defendant herein and is represented by the Defendant's undersigned attorney.

d. The Defendant understands that the Defendant has the right to plead not guilty and has the right to be tried by a jury and, at a trial thereof, has the right to the assistance of counsel, the right to confront and cross-examine witnesses against the Defendant, the right to call witnesses in the Defendant's own behalf, and the right not to be compelled to incriminate the Defendant, and that if the defendant enters a plea of guilty herein, there will not be a further trial of any kind and that by the entry of such a plea, the Defendant waives the right to a trial by jury or to a trial before the Court.

e. The Defendant further understands that in entering a plea of guilty herein, the Court may ask questions about the offense to which the plea is entered and further understands that if the Defendant answers these questions under oath, on the record, and in the presence of counsel, which questions and answers would be recorded, that the answers may later be used against the Defendant in a prosecution for perjury or false statement if the answers are not truthful.

f. The Defendant further understands and advises the Court that the Plea Agreement and Addendum to the Plea Agreement and the plea to be entered by the Defendant as a result thereof is voluntary on the Defendant's part and is not the result of any force or threats or of any promises apart from the aforesaid Plea Agreement and Addendum to the Plea Agreement. The Defendant further advises the Court that the Plea Agreement and Addendum to the Plea Agreement is the result of prior discussions

between the attorneys for the government, and the attorney for the Defendant, all conducted with the Defendant's authorization, knowledge, and consent.

g. The Defendant further advises the Court that the Defendant's understanding of this Plea Agreement and Addendum to the Plea Agreement is as set forth in this document.

h. The Defendant further understands that the Government can only make a sentencing recommendation to the Court, which is not binding on the Court.

i. The Defendant is satisfied that defense counsel has been competent and effective in representing her.

21. The undersigned attorneys for the Government and for the Defendant represent to the Court that the foregoing Plea Agreement and Addendum to the Plea Agreement is the agreement of the parties that has been reached pursuant to the plea agreement procedure provided for in Rule 11, Federal Rules of Criminal Procedure, as amended. The attorney for the Defendant further advises the Court that the Defendant has been advised of the nature of the charge to which the foregoing described plea is to be offered, and that the Defendant has been advised of the defendant's right to plead not guilty and to be tried by a jury on all issues herein; of the maximum possible penalty provided by law; that by the entering of a plea of guilty as aforesaid, the Defendant waives the right to be tried by a jury or by the Court, waives the right to confront and cross-examine witnesses against the defendant and the right not to be compelled to incriminate the Defendant; and that if the Defendant pleads guilty, there will not be a further trial of any kind. Further, the Defendant has been advised that if the Defendant pleads guilty, the Court may ask questions about the offense to which the Defendant has

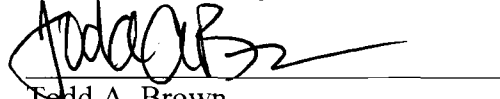
pleaded and that if the plea is rejected or later withdrawn, that the answers to such questions may not be used against the Defendant in a civil or criminal proceeding, but that the Defendant's answers may later be used against the Defendant in a prosecution for perjury or false statement if the answers are not truthful.

22. The Defendant understands that the United States Probation Office will prepare a presentence investigation report for the Court. The Probation Officer will consider the Defendant's conduct related to the offense to which the plea is offered, as well as the Defendant's criminal history. The offense level or criminal history category, as calculated by the Probation Officer and determined by the Court, may differ from that projected by the Defendant's counsel or the United States Attorney.

23. This Plea agreement consisting of 23 numbered paragraphs and 14 pages and Addendum to the Plea Agreement is the entire agreement and understanding between the Government and the Defendant. There are no other agreements, promises, representations, or understandings.

This 30th day of March, 2015.

Respectfully submitted,
GEORGE L. BECK, JR.
UNITED STATES ATTORNEY


Todd A. Brown
Assistant United States Attorney


Michael Boteler
Gregory Bailey
Trial Attorney
U.S. Department of Justice, Tax Division
Southern Criminal Enforcement Section

I have read the foregoing Plea Agreement and Addendum to the Plea Agreement, understand the same, and the matters and facts set forth therein accurately and correctly state the representations that have been made to me and accurately set forth the conditions of the Plea Agreement and Addendum to the Plea Agreement that has been reached.

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE AND CORRECT AND THAT I AM SATISFIED THAT I HAVE RECEIVED COMPETENT ADVICE AND REPRESENTATION FROM MY DEFENSE COUNSEL.


Tracy Mitchell
Defendant

3-30-15
Date


Dwayne Brown, Esq.
Attorney for the Defendant

3-30-15
Date